

United States District Court
For the Northern District of California

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 BERKELEY POLICE DEPARTMENT, et al., No. C-07-6126 MMC

10 Plaintiffs,

**ORDER REMANDING ACTION TO
STATE COURT**

11 v.

12 EMANUEL SIMON EL BEY, and MAKARE
13 AKHET ATEN SIMON EL BEY,

14 Defendants
15 _____/

16 On December 4, 2007, defendants filed a "Writ of Mandamus in the Nature of
17 Removal," by which defendants purport to remove an action from "superior (state) court."
18 Because defendants did not identify therein the action being removed, the Court, by order
19 filed December 13, 2007, directed defendants to file a copy of the complaint or other
20 pleading filed by plaintiffs in state court.

21 Now before the Court is defendants' response to the Court's December 13, 2007
22 order, specifically, a December 20, 2007 filing titled "Writ of Mandamus in the Nature of
23 Removal (From Superior (State) Court to Federal Court 28 § 1441 - 1446)." Attached to
24 said filing are a number of documents, one of which is a copy of the state court matter
25 defendants purport to remove: A "Notice to Appear," numbered 416008 and issued by the
26 Berkeley Police Department on November 27, 2007, directing defendant Makare Akhet
27 Aten Simon El Bey ("Makare Akhet Aten") to appear before the Superior Court of California,
28 Alameda County, to respond to the charge that on November 27, 2007, Makare Akhet Aten

1 was driving a vehicle that was not properly registered and with an expired driver's license.¹

2 A criminal matter instituted in state court may be removed to district court, pursuant
3 to 28 U.S.C. § 1443, if the defendants can satisfy a two-part test. "First, the [defendants]
4 must assert, as a defense to the prosecution, rights that are given to them by explicit
5 statutory enactment protecting equal racial civil rights." Patel v. Del Taco, Inc., 446 F.3d
6 996, 999 (9th Cir. 2006) (internal quotation and citation omitted). "Second, [the defendants]
7 must assert that the state courts will not enforce that right, and that allegation must be
8 supported by reference to a state statute or constitutional provision that purports to
9 command the state courts to ignore federal rights." Id. (internal quotation and citation
10 omitted). Here, although defendants indicate they will contest the criminal charges made
11 against Makare Akhet Aten, defendants do not assert a defense based on rights given to
12 her by a statute protecting equal racial civil rights; rather, defendants assert defenses
13 allegedly provided by documents such as the "Zodiac Constitution." Even assuming
14 Makare Akhet Aten intends to raise a defense based on a statute protecting equal racial
15 civil rights, defendants do not, and cannot, point to any provision of California law "that
16 purports to command the state courts to ignore federal rights." See id.

17 Accordingly, the instant action is hereby REMANDED to the California Superior
18 Court for the County of Alameda.

19 The Clerk shall close the case.

20 **IT IS SO ORDERED.**

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22 Dated: December 28, 2007

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MAXINE M. CHESNEY
United States District Judge

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27 ¹The copy of the Notice to Appear provided by defendants is of poor quality, and the
28 specific violations alleged thereon are illegible. In their filings, however, defendants have
identified the nature of the charges set forth in the Notice to Appear.